

1 Burke you said, right?

2 A. Yes.

3 Q. And he's with Tyco Healthcare in  
4 Massachusetts?

5 A. Yes.

6 Q. And he was asking about your purchases  
7 under the CP Medical contract, was he not?

8 A. Yes.

9 Q. And initially you told him that you were  
10 selling the products to CP Medical, didn't you?

11 A. No. Well, initially he had called Jeff  
12 and started that bizarre story, then he calls me,  
13 Joe Burke does, and tells me what his conversation  
14 was with Jeff, and then I called Jeff, I think  
15 we've already talked about this, but that was the  
16 initial conversation.

17 Q. My question though is you had  
18 conversations with Joe Burke, correct?

19 A. Yes. Yes.

20 Q. And you told Joe Burke at one point that  
21 the products were sold to CP Medical, didn't you?

22 A. Either sold -- I don't know if I said  
23 sold to or sold through, whatever.

24 Q. But you either said sold to or sold

1 through CP Medical, correct?

2 A. Yes.

3 Q. And you intended to have Mr. Burke  
4 believe that CP Medical received the products that  
5 you had purchased under the CP Medical contract,  
6 didn't you?

7 A. No.

8 Q. What did you intend when you told  
9 Mr. Burke that the products were sold to or  
10 through CP Medical?

11 A. That they were sold through the CP  
12 Medical contract.

13 Q. Do you remember telling Mr. Burke that  
14 you were drop shipping to CP Medical customers?

15 A. Yes.

16 Q. And when did you tell him that?

17 A. About the same time he was asking -- he  
18 was drilling me on some other questions.

19 Q. And he asked you for your invoices about  
20 the sales of the products you had sold or let me  
21 rephrase that. Mr. Burke asked you for invoices  
22 reflecting the sales of the products you had  
23 purchased under the CP Medical contract, correct?

24 A. Yes.

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1 this stuff, I don't need this, I need where they  
2 were sold, and I said Joe, I told you that I  
3 wasn't going to give you that.

4 Q. \* At this point though you had led  
5 Mr. Burke to believe that you had dropped shipped  
6 the products to CP Medical's customers, didn't  
7 you?

8 MR. GALVIN: Objection to the  
9 form. You can answer if you understand.

10 MR. CLEMENTS: Can you just read  
11 the question again.

12 \* (Question read)

13 Q. You can answer the question.

14 A. I did say that.

15 Q. And do you recall receiving a letter  
16 from Mr. Burke requesting invoices reflecting  
17 those sales --

18 A. Yes.

19 Q. -- in early August --

20 A. Yes.

21 Q. -- 2003?

22 A. (Witness nods head.) Yes.

23 Q. And in response to that letter, that's  
24 when you sent Mr. Burke the invoices that you've

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1 A. Yes.

2 Q. Then if you go to MPI 1882, the next  
3 page, there's a reference to an attached document,  
4 do you see that at the bottom?

5 A. Yes.

6 Q. Medical Products request for invoices?

7 A. Uh-huh.

8 Q. Yes?

9 A. Yes.

10 Q. In any event, you recall receiving the  
11 letter shortly after August 1st or August 2, 2003?

12 A. I did.

13 Q. Did you speak to Mr. Burke about the  
14 letter?

15 A. Yes.

16 Q. And when was that?

17 A. Let's see. This was in August. No.  
18 I'm not sure if I spoke to him about this or not.

19 Q. Let me ask you, you knew that Mr. Burke  
20 was inquiring in order to ensure compliance with  
21 the Tyco Healthcare Kendall rebate policy when you  
22 received this, didn't you?

23 MR. GALVIN: Objection to the  
24 form. You can answer if you can understand

1 the question.

2 A. Say that again or rephrase it.

3 Q. You understood when you received  
4 Mr. Burke's letter in August of 2003 that  
5 Mr. Burke was attempting to ensure compliance by  
6 MPI with the Kendall Tyco Healthcare rebate policy  
7 by MPI, didn't you?

8 A. I understand what he was getting at.

9 Q. You knew he was trying to enforce the  
10 rebate policy, didn't you?

11 A. Well, the conversations that he had and  
12 I had had about that was we never felt like we  
13 were under rebate.

14 Q. Let me direct your attention to the  
15 bottom of MPI 1881, the second page of this  
16 Exhibit 9. Do you see where Mr. Burke writes to  
17 you in his e-mail, "No rebate claims or rebate  
18 deductions will be allowed until we determine  
19 compliance with our rebate policy"?

20 A. Yes.

21 Q. You received that e-mail, didn't you?

22 A. Yes. They called this a rebate, but  
23 this was not a rebate.

24 MR. GALVIN: Just he'll ask the

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1 questions.

2 THE WITNESS: Okay. I'm sorry.

3 Q. The letter of August 2, 2003, the first  
4 page of Exhibit 9 beginning of the first paragraph  
5 -- I'm sorry -- beginning of the second paragraph,  
6 could you read that first sentence, please?

7 A. "As you know CP Medical are the only  
8 customer on the rebate contract for which Medical  
9 Products may submit a valid rebate claim."

10 Q. And the next sentence?

11 A. In order for Kendall Healthcare to  
12 assess the validity of your rebate claims and  
13 reductions, we require all purchase orders,  
14 invoices and proof of delivery to CP Medical  
15 and/or other customers for all Kendall -- or other  
16 customers for all Kendall Healthcare products for  
17 which Medical Products claims a rebate.

18 Q. And you read Mr. Burke's letter when you  
19 received it?

20 A. Uh-huh. I did.

21 Q. Yes?

22 A. I did, yes.

23 Q. And you sent a letter and invoices in  
24 response to that request, didn't you?

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1 A. Yes.

2 (Deposition Exhibit No. 10 letter dated  
3 8/21/03 to McCafferty with invoices,  
4 marked for identification)

5 Q. Let me show you Exhibit 10, Mr.  
6 McCafferty. It's a fairly thick document, so take  
7 a look through it and let me know when you're  
8 ready for me to ask you a question about it.

9 A. I'm familiar.

10 Q. You recognize Exhibit 10?

11 A. Yes.

12 Q. What is it?

13 A. It's invoices -- actual invoices that we  
14 sold of Monoject products to our customers.

15 Q. And the first page is a letter you wrote  
16 to Mr. Burke, correct?

17 A. Uh-huh.

18 Q. Yes?

19 A. Yes.

20 Q. Let's just take a look at one of the  
21 attached invoices, okay, let's go to TH0443. See  
22 that?

23 A. Yes.

24 Q. How did you actually obtain these

1 invoices in order to send them to Mr. Burke in  
2 August of 2003?

3 A. These are invoices -- these are actual  
4 invoices that I promised him and I told him that  
5 they would be referenced to CP Medical.

6 Q. Let me just stop you because that's not  
7 my question. My question is where did you  
8 actually get these invoices in order to send them  
9 to Mr. Burke?

10 A. Out of our files.

11 Q. What files?

12 A. Our customer invoice files.

13 Q. Are they different files or are they in  
14 one file?

15 A. No. They're -- I mean, this customer  
16 may have ordered -- well, this is -- they may have  
17 ordered this along with other things, no, it's --  
18 they're just -- they're not separated.

19 Q. TH0443 through TH0495 in Exhibit 10 is a  
20 series of invoices, correct?

21 A. Yes.

22 Q. Were they together in the MPI files?

23 A. No.

24 Q. How did you get them together?



1           A.    We generated a report for medical -- I  
2    mean, for Monoject sales and the customers that  
3    came up, we pulled the invoices out and sent them  
4    to him.

5           Q.    Who did that?

6           A.    That, I don't know. One of the girls in  
7    the office or maybe a couple of them 'cause it  
8    was, you know, probably a chore.

9           Q.    Did this come from the Synchronics  
10   system?

11          A.    No. This would have come from the  
12   files.

13          Q.    The paper files?

14          A.    Paper files, yes.

15          Q.    Do you keep a file for each customer?

16          A.    Yes.

17          Q.    And is it your testimony that for each  
18   of your separate customers, these invoices were  
19   contained in the files before Mr. Burke asked you  
20   for the invoices?

21          A.    Yes. Yes.

22          Q.    How did they come to be contained in  
23   those files? Just describe that process, if you  
24   would, please.

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1           A.    After the -- after the order is shipped  
2   and invoiced and a copy of the invoice is put into  
3   the customer file.

4           Q.    Let's take an example, okay.  Let's take  
5   the example that we started with, TH0443.  Okay.  
6   The customer was not CP Medical, correct?

7           A.    Exactly.

8           Q.    So what file did this come from?

9           A.    One of our customers that we sell -- the  
10  customer that we sold this to.

11          Q.    Looking at this invoice, how can you  
12  tell which customer it was?

13          A.    Give me a second.  I don't know that you  
14  could tell.  Well, you could tell from the invoice  
15  number.

16          Q.    So let's stay with TH0443.

17          A.    You can tell from the invoice number.

18          Q.    So TH0443 is an invoice number, that's  
19  difficult to read 135878, is that right?

20          A.    Looks right, yeah.

21          Q.    And what can you tell about that invoice  
22  number, what does that tell you?

23          A.    It identifies that particular invoice  
24  for a particular customer.

1 Q. Well, that identifies this document  
2 TH0443 as that invoice, doesn't it?

3 A. Yes.

4 Q. So this TH0443, the Bates number is  
5 invoice number 135878, is that right?

6 A. Yes.

7 Q. Yes?

8 A. Yes.

9 Q. And is it your testimony that this is an  
10 invoice that was sent to a customer of yours?

11 A. It is.

12 Q. And did you ever have questions from  
13 their customers about why the invoices they were  
14 getting said sold to CP Medical?

15 A. They didn't have that on there.

16 Q. Pardon me?

17 A. They didn't have that on that.

18 Q. You didn't actually send an invoice that  
19 looks like TH0443 to one of your customers?

20 A. No. No. Yes, but it -- it would have  
21 their name on it.

22 Q. Well, this document that I'm looking at  
23 TH0443 has CP Medical on it?

24 A. Yes.

1 Q. So this document never went to any of  
2 your customers?

3 A. This document didn't, but these products  
4 did.

5 Q. But the document TH0443 was never sent  
6 to any --

7 A. No.

8 Q. -- MPI customers, is that right?

9 A. No.

10 Q. And yes, it's right that it was not  
11 sent?

12 A. Exactly. Yes.

13 Q. And none of the documents that are  
14 actually identified as invoices in Exhibit 10 were  
15 actually sent to MPI customers, were they?

16 A. Not as you see them.

17 Q. They looked different when they went to  
18 the customer, is that right?

19 A. They had the customer name on them and  
20 said CP on them, yes.

21 Q. When did CP Medical's name get on these  
22 documents?

23 A. When Joe Burke wanted a copy of the  
24 invoices.

1 Q. So you changed the invoices after  
2 Mr. Burke's request?

3 A. Yes, with his knowledge.

4 Q. Why do you say with his knowledge?

5 A. 'Cause I told him that I would send him  
6 the actual invoices, but I would not send him the  
7 actual customers that that invoice was sold to.

8 Q. Did you tell him that you were going to  
9 change the actual invoices?

10 A. Yes. I told him that I have no problem  
11 sending you the invoice, but I would reference it  
12 to the contract, CP Medical which was the  
13 contract, you would not -- you would not get a  
14 customer name.

15 Q. So these invoices that you sent to  
16 Mr. Burke weren't the actual invoices that went to  
17 your customers?

18 A. Not this -- not these particular pages.

19 Q. These particular pages were altered to  
20 say CP Medical rather than the real customer?

21 A. Exactly.

22 Q. That alteration happened after  
23 Mr. Burke's request?

24 A. Yes.

1 Q. Were there other alterations to the  
2 invoices that appear in Exhibit 10 after  
3 Mr. Burke's request?

4 A. Well, he didn't need the pricing so we  
5 took it off, but I said that in the statement.

6 Q. So these documents that are in  
7 Exhibit 10 weren't actually in the files for your  
8 customers before Mr. Burke requested invoices,  
9 were they?

10 A. I mean, that's the only place we could  
11 have got them was from the files.

12 Q. Let me ask you, did documents that have  
13 CP Medical as the sold to recipient and have no  
14 prices and no amount exist in customer files until  
15 Mr. Burke asked you for them?

16 A. No.

17 Q. So these were created after Mr. Burke  
18 asked for invoices --

19 A. Yes.

20 Q. -- weren't they?

21 A. Yes.

22 Q. So you didn't go and get them out of  
23 customer files, did you?

24 A. Not this particular thing, but to create

1 this, yes.

2 Q. So this particular thing, and you're  
3 referring to Exhibit 10's invoices, were created  
4 at the time and in response to Mr. Burke's request  
5 for actual customer invoices, isn't that right?

6 A. That would be right.

7 Q. Who created these documents?

8 A. Like I said, you know, I don't know. A  
9 couple girls probably in the office.

10 Q. Did you instruct them to?

11 A. Yes.

12 Q. And did they ask why?

13 A. No.

14 Q. Do you know the actual people in the  
15 office who did it?

16 A. No, I don't. I mean, it could have been  
17 a couple of high school girls, you know, that come  
18 in and work part time or something, I don't know.

19 Q. Let's go back to TH0442, Mr. McCafferty,  
20 the first page of Exhibit 10. You wrote to  
21 Mr. Burke, "These invoices go back to the last  
22 price change in March 2003," do you see that?

23 A. Yes.

24 Q. What did you mean by that?

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1           A.    Well, he was saying -- he was asking me  
2    if I could start sending him some and I said yes  
3    and he said, you know, just send me, you know,  
4    like in groups or whatever and I was just  
5    referencing that these are March '03 -- go back to  
6    March '03.

7           Q.    And what did you mean by anything on the  
8    past -- let me ask that again.  You also wrote to  
9    Mr. Burke, "Anything on the past price changes are  
10   purged from one year to the next."  You wrote  
11   that, right?

12          A.    Yes.

13          Q.    And that's not true, is it?

14          A.    No.

15          Q.    That was false?

16          A.    Yes.

17          Q.    In response to Mr. Burke's inquiries --  
18   questions to you, you never told him that you only  
19   called CP Medical the customer because Rob Cotten  
20   told you to do that, did you?

21          A.    No.

22          Q.    You never told him that?

23          A.    No.

24          Q.    You never suggested that Joe Burke ask



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1 COMMONWEALTH OF MASSACHUSETTS  
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2  
3 I, Jacqueline Curran, Registered Merit  
4 Reporter and Notary Public in and for the  
5 Commonwealth of Massachusetts, do hereby certify  
6 that pursuant to appropriate notice of taking  
7 deposition, there came before me the  
8 following-named person, to wit: EDDIE McCAFFERTY,  
9 who was by me duly sworn; that he was thereupon  
10 examined upon his oath and his examination reduced  
11 to writing by me; and that the deposition is a  
12 true record of the testimony given by the witness.

13  
14 I further certify that I am not a relative  
15 or employee or counsel or attorney for any of the  
16 parties, or a relative or employee of such counsel  
17 or attorney, nor am I financially or otherwise  
18 interested in the outcome of the action.

19  
20 IN WITNESS WHEREOF, I have hereunto set my  
21 hand and seal this 12th day of January, 2005.

22  
23 My Commission Expires  
24 September 27, 2007

Notary Public

25  
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5 When the Errata Sheet has been completed by  
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I have read the foregoing transcript of my deposition and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

DATE \_\_\_\_\_